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## CASE LAW

### A. COURT OF JUSTICE

Case C-281/98, *Roman Angonese v. Cassa di Risparmio di Bolzano SpA*,  
Judgment of 6 June 2000, not yet reported

#### 1. Introduction

“It may seem surprising . . . that the Court has not to date had occasion to comment on the application of Article 48 to employment conditions specified by individual undertakings.”<sup>1</sup>

This understatement from Advocate General Fennelly characterizes the subtlety with which the Court of Justice has grasped the nettle, now the occasion has finally arisen. Whether it has been done as successfully as subtly requires seriously to be considered, given the inevitable repercussions of the judgment.

#### 2. Factual background

In much the same vein as *Groener*,<sup>2</sup> the background to *Angonese* pits non-discriminatory access to employment against the legitimacy of procedures for determining linguistic competence. In August 1997, Mr Angonese – an Italian national and resident of the autonomous province of Bolzano – applied to enter into a competition for advertised posts with the Cassa di Risparmio, a private banking undertaking in Bolzano. The advertisement had stipulated that possession of a specific certificate of bilingualism in Italian and German – known in Bolzano as the “*patentino*” and formerly required for access to certain public service posts – was a condition for entry to the competition. The *patentino* was issued solely by the public authorities in Bolzano, following successful completion of both oral and written stages of an examination held

1. A.G. Fennelly at para 41 of his Opinion.

2. Case 379/87, *Groener v. Minister for Education and the Dublin Vocational Education Committee*, [1989] ECR 3967.

four times annually at an examination centre in the province. The requirement imposed by the *Cassa* was a product of a national collective agreement for savings banks, which allows individual institutions to establish procedures for staff recruitment, including a decision as to whether recruitment is to be based on "... an internal competition on the basis of either qualifications and/or tests or in accordance with selection criteria specified by the institution."<sup>3</sup> Although residents of the province routinely obtain the certificate for purposes of employment, Mr Angonese did not possess the *patentino* at the material time. His mother tongue was German and the national court had found that he was perfectly bilingual. He sought entry to the competition by submitting *inter alia* certificates relating to his studies (through the medium of German) of English, Polish and Slovene at the University of Vienna from 1993 to 1997, although these studies had not led to the award of a degree. The *Cassa* refused to admit him to the competition on the grounds that he was not a holder of the *patentino*. Mr Angonese, in turn, claimed that the *Cassa's* precondition of possession of the *patentino* was unlawful in light of Community law on the free movement of workers, citing arguments based on Article 39 (ex 48), and Articles 3(1), 7(1) and 7(4) of Regulation 1612/68.<sup>4</sup> The national court (the *Pretura Circondariale di Bolzano*) therefore referred the following question to the Court of Justice for a preliminary ruling under Article 234:

Is it compatible with Article 48(1), (2) and (3) of the EC Treaty and Articles 3(1) and 7(1) and (4) of Regulation (EEC) No 1612/68 to make the admission of candidates to a competition organized to fill posts in a company governed by private law conditional on possession of the official certificate attesting to knowledge of local languages issued exclusively by a public authority of a Member State at a single examination centre (namely, Bolzano), on completion of a procedure of considerable duration (to be precise, of not less than 30 days, on account of the minimum lapse of time envisaged between the written and the oral test)?

In *Groener*, the Court of Justice held that the implementation of language policy by a Member State must not encroach upon the free movement of workers;<sup>5</sup> essentially, while it was deemed legitimate for Ireland to pursue its official language policy objectives, the Court reserved the right to test that policy for compliance with the general principles of non-discrimination and proportionality where language requirements trenched upon the free movement of Community workers. The case was decided substantively on the basis of Article 3(1) of Regulation 1612/68, as the employer was an emanation of the State. The Court found, on that occasion, that the linguistic competence

3. *Angonese*, at para 11.

4. Regulation 1612/68 J.O. 1968, L 257/2.

5. *Groener*, at para 19.

requirement at issue could be justified “by reason of the nature of the post to be filled” (Art. 3(1) of the Regulation) and was not, therefore, discriminatory; but it did forewarn that “. . . the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory.”<sup>6</sup> It was upon this *dictum* that Mr Angonese principally relied. As in *Groener*, the right of the employer to require evidence of linguistic competence was not challenged; rather, he contested the rule that this requirement could be satisfied only by possession of the *patentino*. The referring court also drew attention to the fact that the way in which the *patentino* examination stages are structured made it unlikely that a potential candidate who did not already possess the certificate could have obtained one before the closing date for applications specified in the advertisement. And given that the *patentino* is held almost exclusively by residents of Bolzano, and so predominantly Italian nationals, its requirement could constitute indirect discrimination on grounds of nationality. Drawing from the reasoning of the Court in *Groener*, it would seem Mr Angonese had a compelling case. But there were two fundamental differences here. First, the employer was a private undertaking; second, Mr Angonese was seeking to invoke a Community law right as against his own Member State. Both aspects challenge the boundaries of the Court’s jurisprudence to date on the free movement of workers.

### 3. The Judgment

The Court first brushed aside a question on the admissibility of the reference raised by the Italian Government and the *Cassa*, then determined that Regulation 1612/68 did not apply (Art. 3(1) addressing laws, regulations or administrative practices of a Member State, and so not in issue, and the collective agreement to which the *Cassa* was party neither requiring nor authorizing the adoption of discriminatory criteria which would cause it to fall foul of Art. 7(4)). The question fell therefore to be considered under Article 39 only. The Court noted that the prohibition of discrimination based upon nationality contained in Article 39 was in general terms, and not addressed to the Member States. It then cited *Walrave*<sup>7</sup> and *Bosman*<sup>8</sup> as precedents for the application of Article 39 to rules of private origin that restricted access to employment upon a collective basis. Since rules governing access to employment may, as a function of public or private regulation, vary from Member State to Member

6. *Groener*, at para 23.

7. Case 36/74, *Walrave v. Union Cycliste Internationale*, [1974] ECR 1405.

8. Case C-415/93, *Union Royal Belge des Sociétés de Football Association v. Bosman*, [1995] ECR I-4921.

State, limiting the application of Article 39 to the former would risk inequality in its application. It was already established in *Defrenne*<sup>9</sup> that Article 141 (ex 119) was capable of horizontal direct effect, and

“such considerations must, *a fortiori*, be applicable to Article [39 (ex 48)] of the Treaty, which lays down a fundamental freedom and which constitutes a specific application of the general prohibition of discrimination contained in Article [12 (ex 6)] of the EC Treaty. In that respect, like Article [141 (ex 119)] of the EC Treaty, it is designed to ensure that there is no discrimination on the labour market.”<sup>10</sup>

Upon the basis of this reasoning, the Court then dropped its quiet bombshell:

“Consequently, the prohibition of discrimination on grounds of nationality laid down in Article [39 (ex 48)] of the Treaty must be regarded as applying to private persons as well.”<sup>11</sup>

As to whether the requirement imposed by the *Cassa* governing access to the recruitment competition constituted discrimination contrary to Article 39, whilst the requirement of linguistic knowledge and possession of a diploma attesting to it was confirmed as *prima facie* legitimate, the fact that the *patentino* was the only diploma recognized by the *Cassa* meant that persons not resident in Bolzano would find it difficult or impossible to gain access to employment with it. The majority of Bolzano residents are Italians, so putting nationals of other Member States at a disadvantage in comparison with residents of Bolzano, notwithstanding Italians not resident in Bolzano being at the same disadvantage. Such discrimination could be saved only if objectively justified on grounds unrelated to nationality that satisfied the test of proportionality; the fact that candidates were barred from producing proof of linguistic ability by other means, particularly equivalent qualifications from other Member States, was, following *Groener*, held to be disproportionate, and so the requirement of evidence of linguistic knowledge “exclusively by means of one particular diploma . . . issued only in one particular province of a Member State”<sup>12</sup> was held to constitute discrimination on grounds of nationality, contrary to Article 39.

#### 4. Comment

The importance of the judgment lies most clearly in what it says about the effects of Article 39. But it is also noteworthy in what it doesn't say. It

9. Case 43/75, *Defrenne v. Sabena*, [1976] ECR 455.

10. *Angonese*, at para 35.

11. *Angonese*, at para 36.

12. *Angonese*, at para 45.

is established law that the rules on free movement of persons and services have no relevance absent a “significant Community element”. This is no high hurdle to clear in the context of services which necessarily address trans-frontier elements, even latterly to the extent of national rules applying to persons resident and established in one State insofar as they may inhibit the provision of services elsewhere.<sup>13</sup> But it is (or was) clear in the context of Article 39 and Article 43 (ex 52) that the Treaty had no relevance or application to situations which were “wholly internal” (or “purely internal”) to a Member State.<sup>14</sup> Inroads against this general principle have been made, first, with the line of authority first articulated in *Knoors*,<sup>15</sup> to the effect that a harmonization directive adopted by the Council under Articles 40, 47 and/or 52 (ex 49, 57 and 63) will create a sufficient Community element for purposes of recognition of a diploma the subject matter of the directive, and second, with *Bouchoucha*,<sup>16</sup> *Kraus*<sup>17</sup> and *Fernández de Bobadilla*,<sup>18</sup> each involving the recognition by a Community national’s home Member State of the equivalence of a diploma gained in another Member State, the fact of the foreign qualification triggering the requisite Community element.<sup>19</sup> For simple residence, the breakthrough came with *Singh*,<sup>20</sup> in which the Court held that where a Community (British) national had, in the exercise of a Treaty right under Article 39, worked in another Member State (Germany) with her non-Community (Indian) husband but subsequently returned to the United Kingdom in order to (re)establish herself there (in the sense of Art. 43), the husband continued to enjoy the same right of residence in the United Kingdom (by virtue of Directive 73/148<sup>21</sup>) that he had enjoyed in Germany (by virtue of

13. Case C-18/93, *Corsica Ferries Italia v. Corpo dei Piloti del Porto di Genova*, [1994] ECR I-1783; Case C-384/93, *Alpine Investments v. Minister van Financiën*, [1995] ECR I-1141. This applies equally to rules which might inhibit a home national from establishing him or herself in another Member State; Case C-251/98, *Baars v. Inspecteur der Belastingdienst, Gorinchem*, judgment of 13 April 2000, nyr.

14. The relevant case law began with Case 175/78, *R v. Saunders*, [1979] ECR 1129; see the subsequent judgments cited by A.G. Fennelly at footnote 12 of his Opinion in *Angonese*.

15. Case 115/78, *Knoors v. Staatssecretaris van Economische Zaken*, [1979] ECR 399.

16. Case C-61/89, *Criminal Proceedings against Bouchoucha*, [1990] ECR I-3551.

17. Case C-19/92, *Kraus v. Land Baden-Württemberg*, [1993] ECR I-1663.

18. Case C-234/97, *Fernández de Bobadilla v. Museo Nacional del Prado*, [1999] ECR I-4773.

19. See *Bouchoucha* at para 11: “It must be pointed out that . . . Mr Bouchoucha, a French national practising in France, holds a professional diploma issued in another Member State. It follows that the scope of the present case is not purely national and the applicability of the EEC Treaty provisions on freedom of establishment much be considered.” To the same effect, see *Kraus* at para 15 and *Fernández de Bombadilla* at para 30.

20. Case C-370/90, *R v. Immigration Appeal Tribunal and Singh*, ex parte *Secretary of State for the Home Department*, [1992] ECR I-4265.

21. Directive 73/148 O.J. 1973, L 172/14 (residence under establishment and services).

Directive 68/360<sup>22</sup>); he “... must enjoy at least the same rights as would be granted to him or her under Community law if his or her spouse entered and resided in the territory of another Member State.”<sup>23</sup> Otherwise, a Community national might be deterred from exercising to the full the Community rights to which he or she is entitled.

*Singh* is a particularly vermicular can of worms. There *was* a fair and fairly apparent Community element in the Singhs’ adventures: they had lived and worked together (so exercising a Treaty right) in Germany and they co-owned the undertaking established in the UK (although they were in the final throes of a divorce). But how far can the principle extend? Has a Belgian who went on holiday to Crete 15 years ago, or from time to time watches TF1 on cable television – both involving the exercise of a Community right – earned the right to invoke Articles 39 or 43 and their attendant legislation in Belgium? *Bosman* – following which a transfer fee from one football club to another within the same Member State (and upon a footballer who was a national of that State) remained exigible (unless contrary to Arts. 81 or 82, a point addressed by A.G. Lenz but not by the Court) – may have refashioned Article 39 significantly, but does not grapple with this anomaly. The issue is to the fore again in *Carpenter*,<sup>24</sup> in which the non-Community spouse of a British national is claiming a Community right of residence with her in the UK by virtue of the fact that she supplies services from time to time in other Member States.

In *Angonese*, the issue did not even arise for consideration. The Court stated that it was “far from clear that the interpretation of Community law ... has no relation to the actual facts of the case or to the subject-matter of the main action”, but this was simply to dismiss the claim of the inadmissibility of the reference.<sup>25</sup> Thereafter the point is not mentioned, though it had formed the basis of Advocate General Fennelly’s Opinion.<sup>26</sup> It must be said that the Community element in *Angonese* is less convincing than that both in *Kraus* and in *Singh*; the Commission admitted that “the existence of a connection with Community law is difficult with respect to existing case law”,<sup>27</sup> recognized that its reasoning (supporting a finding of such a connection here) “might appear bold” in the light of it,<sup>28</sup> and acknowledged that it “would represent a

22. Directive 68/360 J.O. 1968, L 257/13 (right of residence for workers).

23. *Singh*, at para 25.

24. Case C-60/00, *Carpenter v. Secretary of State for the Home Department*, pending; for the questions put to the ECJ see O.J. 2000, C 122/14.

25. *Angonese*, at para 19.

26. A.G. Fennelly effectively accepted the merits of Mr Angonese’s substantive claim (see para 43 of his Opinion) but rejected the case as “entirely hypothetical”, given the absence, in his view, of a sufficient connection with Community law.

27. Para 35 of the Report for the Hearing.

28. Para 38 of the Report for the Hearing.

significant new step in the case law”.<sup>29</sup> Mr Angonese had studied in Vienna, although prior to 1995 this could generate no Community element as Austria had yet to accede; it therefore cannot have been his original intention, if it is material, to exercise a Community right. In any event, he earned no diploma. It was the finding of the *Pretura* that he spoke German fluently; but he could speak it like Goethe and it would avail him little as a matter of Community law absent an appreciable Community element. The simple answer to this is that the Court played a straight bat, and supplied a straight answer to a straight question: the *dispositif* says simply that Article 39 precludes a requirement of possession of a particular diploma issued only in one particular province of a Member State. It is entirely possible (and likely) that the *Pretura* will dispose of the case by finding that Mr Angonese has no diploma of any sort and was therefore not improperly barred from the competition.<sup>30</sup> The fact remains that the Court, unlike Advocate General Fennelly, did not address the “appreciable Community element” question; the result is, therefore, uncomfortably vague and incomplete. But it may also reflect an unwillingness further to compromise internal Member State autonomy and sensibilities. How far Mr Carpenter can force the Court’s hand remains to be seen.

The primary importance of the judgment is, of course, that Article 39 is (we now know) horizontally directly effective. This is a course which had been urged upon the Court by a number of academic writers,<sup>31</sup> and it may be a logical, perhaps irresistible, consequence of the pebbles loosed downhill in *Walrave* and then *Bosman*. However, it goes significantly beyond them. It may be a fairly seamless progression to extend a prohibition of (apparently) State discrimination in employment law to private agreements which universally and *de facto* compulsorily regulate access to employment in a given sphere (*Bosman*); in fact, *Bosman* is in ways less iconoclastic than the *Marshall* construct which binds emanations of the State to directive obligations even in their private law (contracts of employment) relationships.<sup>32</sup> But *Angonese* leaps a far wider synapse than either *Bosman* or *Marshall* to embrace discrimination the freely chosen option of a private employer. It is true that the

29. Para 10 of the Opinion.

30. This is consistent with the general thrust of the rules on mutual recognition, which measure not knowledge but qualifications. Support for the likelihood of this result can be gleaned from para 44 of the judgment, where the Court refers to “in particular by *equivalent qualifications obtained in other Member States*” (emphasis added). A.G. Fennelly had applied a different slant in this context, assessing the substance of the studies abroad rather than the ultimate (non-)existence of a diploma or certificate; see paras 27–30 of his Opinion.

31. E.g. Roth, “Drittwirkung der Grundfreiheiten?”, in Due, Lutter and Schwarze (Eds.), *Festschrift für Ulrich Everling*, vol. II (1995, Nomos), p. 1231, 1237 et seq; Kluth, “Die Bindung privater Wirtschaftsteilnehmer an die Grundfreiheiten des EG-Vertrages”, 122 AöR (1997) 557, 566 et seq.

32. Case 152/84, *Marshall v. Southampton and Southwest Hampshire Area Health Authority*, [1986] ECR 723.



conduct of the *Cassa di Risparmio* was grounded originally in a national collective agreement, and collective agreements have (tentatively) been held to fall within Article 39;<sup>33</sup> but it is clear that adherence to the terms of the agreement at issue was entirely optional, so much so that the Court dismissed the application of Article 7(4) of Regulation 1612/68 out of hand.<sup>34</sup> *Angonese* is therefore a clear extension of Article 39 and an irrefutable recognition, and *ex cathedra* pronouncement, of an obligation imposed directly upon private employers.

But whilst the edifice partly built in *Walrave* and *Bosman* is now completed, the architecture is nonetheless shaky. The logic deployed by the Court boils down simply to the following: disharmony between Member States as the result of public/private regulation of access to the labour market is undesirable, Article 141 has horizontal direct effect, the principle ought to apply no less to Article 39, and so it does. But whether this justifies the result and the burdens now recognized to be borne by all employers, public and private, may be queried. There is disharmony in many areas of Community law – the uniform application of (unimplemented or incorrectly implemented) directives being only the most obvious example – which is not cured by the Court. The repercussions of *Angonese* are myriad and apparent: it extends the reach of Community law even more deeply into employment law; it will inevitably engender a new raft of litigation from disgruntled employees (or prospective employees). Now, all private employers in all Member States must afford Community law standards to migrant workers whilst not obliged to do so for home nationals. Whilst this is laudable in terms of increased protection for Community workers, the continuing wisdom of the “wholly internal” rule and its reverse discrimination seems more incoherent and increasingly untenable.

This overlaps with the debate evolving elsewhere, on the extent to which the Draft Charter of Fundamental Rights in the European Union should be binding within the Member States. As to fundamental rights already recognized in the case law of the Court of Justice, this is something of a moot point where the application and implementation of Community law is in question. What is perhaps thrown into focus by *Angonese*, however, is the extent to which the reach of Community law is far from settled. Already a situation that can be linked to Community law activates rights not applicable in a purely domestic or internal matter. From the perspective of the migrant Community worker, the horizontal direct effect of Article 39 certainly generates yet another dimension of protection; but in the current political climate, and particularly in but not restricted to the UK, the judgment could be interpreted as yet another blatant intrusion into the preserve of national regulation.

33. Case C-234/97, *Fernández de Bobadilla*, *supra* note 18.

34. *Angonese*, at paras 23–27.

However, given that the threshold beyond which Community law can come into play has been rolled back extensively, if subtly (stealthily?), in recent years, is it tenable, for the effective protection of individual rights, to resist the application of Community rights in situations *still* “purely internal”? The Court seems increasingly to be prepared to accept arguably tenuous links to Community law in order to grant the corollary protection available, meaning that the limits still recognized appear more and more arbitrary by comparison. This may be construed as the taking of free movement to its “logical” conclusion, but it is surely both politically and pragmatically questionable. Indeed, Advocate General Fennelly alluded to the latter consideration in his Opinion.<sup>35</sup>

When considering whether Article 39 can bind private employers, Advocate General Fennelly drew a distinction between allegations of direct and indirect discrimination, concluding that the prohibition of indirect discrimination “may present special problems and difficulties in the case of private economic actors”.<sup>36</sup> He did not elaborate further. In any event, the Court placed no such limitation on the horizontal application of Article 39. The Advocate General’s suggestion can be taken to have been implicitly rejected, given that the discrimination alleged in *Angonese* was indirect. This issue is analogous with the direct effect of Article 141 and *Defrenne*, upon which the Court drew significantly in the present case, where horizontal direct effect was confined initially to “direct and overt” discrimination.<sup>37</sup> The Court’s u-turn in *Jenkins* marks, on the one hand, an advance, in that indirect discrimination by private employers is now deemed to be caught by Article 141.<sup>38</sup> However, the corollary introduction of objective justification in this context – a necessarily nebulous concept which appears relatively easy to satisfy from the employer’s perspective – has muddied the waters somewhat, even more so considering that the substantive judgment falls invariably to be decided by the national courts.<sup>39</sup> Perhaps the Advocate General was attempting to steer the path of Article 39 away from the pitfalls already problematic in the field of equal pay. Further, whilst Article 39(2) relates to the abolition of discrimination regarding “employment, remuneration and other conditions of work and employment”, *Angonese* addresses eligibility for employment, traditionally the preserve of Regulation 1612/68. The Court stated expressly that Article

35. At paras 9 and 31.

36. At para 41 of his Opinion.

37. *Defrenne*, at paras. 18 and 40.

38. Case 96/80, *Jenkins v. Kingsgate (Clothing Productions) Ltd.*, [1981] ECR 911, at paras. 9–14.

39. See the line of cases beginning with Case 170/84, *Bilka-Kaufhaus v. von Hartz*, [1986] ECR 1607 and Case 171/88, *Rinner-Kühn v. FWW Spezial-Gebäudereinigung*, [1989] ECR 2743.

3(1) of Regulation 1612/68 – the provision on which its decision in *Groener* rests – does *not* apply to the conduct of private undertakings. But it renders the provision applicable *in effect* via the horizontal direct effect of Article 39. This is an issue that arose also in respect of the breadth of Article 141, which was extended implicitly by the wider detail of Article 1 of Directive 75/117<sup>40</sup> being absorbed into it.<sup>41</sup> The same may well come to pass here. Finally, we now know that Article 141 is horizontally directly effective and Article 39 is horizontally directly effective. The obvious question to ask is simply, what next?

In reality, the aspects of *Angonese* that relate to the actual essence of the case – language policy and regional autonomy – are likely to be overshadowed by the considerations discussed above. The substantive decision can hardly, following on from *Groener*, be seen as surprising. But the judgment is unlikely to receive a warm welcome in Bolzano. Language is a politically sensitive issue in any context, but perhaps even more so where it is so intimately connected with the preservation and evolution of regional culture. The Court of Justice has always been careful to stress that the protection of a linguistic minority is a legitimate objective *per se*; and, as noted, the right of an employer to include language requirements in its recruitment selection criteria is *prima facie* justified and justifiable. But, on the other hand, the Court's assessment of domestic language policy is frequently perceived as an unwarranted intrusion. This point may be further illustrated by reference to its judgment in *Bickel and Franz*,<sup>42</sup> where, under Community law, an Austrian worker and a German tourist were both found to be entitled to have criminal proceedings against them in Bolzano conducted through the medium of the German language, a right usually accorded to residents of the province only. The extent to which regional autonomy in the administration of language policy is delineated in Italy is demonstrated by the fact that it was considered preferable by the Italian Government that the proceedings be conducted in Italian via the use of interpreters; significantly, this would have met the standard of protection required by the European Convention on Human Rights.<sup>43</sup> Both the Court of Justice and Advocate General Jacobs confirmed that protection of a linguistic minority was a wholly legitimate aim; as in *Groener*, however, a Member State's language policy was reviewed against the Community law requirements of non-discrimination and propor-

40. Directive 75/117 O.J. 1975, L 45/19 (the equal pay Directive).

41. Case 96/80, *Jenkins*, *supra* note 38.

42. Case C-274/96, *Criminal Proceedings Against Bickel and Franz*, [1998] ECR I-7637.

43. Art. 6(3)(e) ECHR guarantees that everyone charged with a criminal offence has the right to the free assistance of an interpreter if s/he cannot understand or speak the language used in court. The Italian Government referred also to the similar protection guaranteed by Art. 14(3)(f) of the International Covenant on Civil and Political Rights.

tionality in the context of free movement. In particular, the Advocate General pointed to the irony that “[r]efusing the use of German to visitors does not in any way serve [the aim of protecting a linguistic minority]. If anything, it has the reverse effect: it reinforces Italian as the principal language even in the predominantly German-speaking region of Bolzano.”<sup>44</sup> The idea that an issue can be considered as “purely internal” is not confined to the realm of the Member State. And an additional factor must be taken into account in the context of regional government. The channels through which sub-national authorities can participate in EC decision-making are effectively controlled by the internal constitutional structures of the Member States – yet the policies of sub-national authorities are clearly subject to the application of Community law and principles. This is, to put it at its lowest, unsatisfactory.

Mr Angonese will now join the annals of Community law pioneers, alongside Ms Defrenne, Miss Marshall and Mr Bosman. The irony is that whilst ultimately the claims of his predecessors prevailed, it is unlikely that he will gain any benefit himself from the legal breakthrough he has wrought.

Robert Lane and Niamh Nic Shuibhne\*

44. *Bickel and Franz*, per A.G. Jacobs at para 41 of his Opinion.

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